Nutrient Management Act, 2002

Manure Agreements with Brokers and Neighbours

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Factsheet

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Replaces OMAFRA Factsheet 09-057, *Manure Agreements with Brokers and Neighbours*

INTRODUCTION

Farmers whose operations generate manure or other agricultural source materials but lack an adequate landbase to spread these nutrients in a sustainable manner are faced with potentially difficult decisions.

Options for managing the surplus manure or agriculture source material include:

- expanding the crop production landbase by purchasing or renting/leasing additional land
- transferring material to a neighbour for land application or to an intermediate operation (e.g. mushroom compost facility)
- arranging an application agreement where the owner of the land continues farming the property while the generator manages the application of manure
- arranging for a broker to take the material

This Factsheet explores each of these options to help determine which best suits the circumstances and goals. Sample agreement forms are included. These forms are consistent with the current requirements of the *Nutrient Management Act*, 2002, (NMA) and *Ontario Regulation* (O. Reg. 267/03).

EXPANDING CROP PRODUCTION LANDBASE

An operation can expand its landbase for manure application by either buying more land, renting or leasing additional property. There are reasons why these options may not be a good business fit: suitable land may not be available in the immediate vicinity, cropping may not be part of the current operation or it would require a significant investment to move into that business.

TRANSFERRING MATERIAL THROUGH AGREEMENTS

If purchasing or leasing more land is not a preferred option, another option is to transfer the surplus material to another location. This Factsheet discusses the three types of possible agreements for transferring surplus materials:

- nutrient transfer agreement
- application agreement
- broker agreement

Please note that if a farm requires a Nutrient Management Strategy (NMS), a Nutrient Management Plan (NMP)or a NASM plan, a formal written agreement is required by the Nutrient Management regulation (the *Regulation*).

Transfer through a Nutrient Transfer Agreement

Operations that generate agricultural source material can give or sell this material to another operation. This transaction is documented through a nutrient transfer agreement.

Section 20 of the *Regulation* specifies that a Nutrient Transfer Agreement is required when the generating farm requires a NMS and the receiver is a farm that requires a NMP or a NASM plan. Even if a transfer agreement is not required it is still good practice for farms that transfer or receive agricultural source material to have a formal agreement between them.

This section also sets out the minimum information that must be included in a transfer agreement. The agreement must:

- identify the generator
- list the person/company to whom the material is transferred

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Ontario

- contain a statement setting out the type and quantity of material to be transferred, as well as time of the expected transfer
- include the NMS, NMP or NASM plan identifier number (if assigned, issued by OMAFRA)

Both parties must sign the agreement and the agreement must be included in the NMS of the generating operation. Make sure to include other conditions in the agreement that are specific to the parties involved, such as which party will look after transporting the materials. An example *Nutrient Transfer Agreement* can be found on page 4.

Transfer through an Application Agreement

This agreement demonstrates that the generator of the agricultural source material will manage the land application of the material and that the landowner of the property where the material is applied consents to the application. If the generator is required to have an NMS, the land described in the agreement is treated as part of the farm unit of the generator for the duration of the agreement. Therefore, the land must also be identified on the Farm Unit Declaration of the generator's farm unit.

A sample *Application Agreement* form is shown on page 5. As well as the conditions set out on the sample some of the following issues may also need to be documented:

- When and how will the manure be applied? A landowner may not wish to have manure spread if the soil is too wet or at specific times of the year, for example in the spring.

- What contingencies exist if this occurs?

- If there is a spill, what are the responsibilities of each party? Pollution liability insurance is a good idea for both parties.

It is also important to identify who owns the crop. Landowners, in agreeing to permit nutrients to be applied to their land, could be held liable for damages resulting from misuse or accidental release of these nutrients to the environment. A good agreement helps protect both parties from such occurrences.

Transfer through a Broker Agreement

Another option for managing surplus agricultural source material is to give or sell the material to a person or business that becomes responsible for finding a suitable use or destination for the material. This person or business acts as a broker.

Section 1(1) of the *Regulation* defines a broker as a person who receives agricultural source materials from an operation, does not generate a new nutrient product from those materials and does any of the following:

- transfers the prescribed materials to another operation
- applies them to land on behalf of another or
- stores them for either purpose

As a standard business practice, a broker may wish to complete a *Broker Agreement Form* with:

- each person from whom they receive agricultural source material and
- each person to whom they transfer agricultural source material

Under the *Regulation*, a broker must have a signed broker agreement:

- with the generator of the material before they are allowed to receive agricultural source material from an operation required to have a NMS
- with the receiver of the material before they are allowed to deliver material to an operation that is required to have an NMP or a NASM plan

Sections 36 and 37 of the *Regulation* set out when a broker agreement is required and what information is required to be in these agreements. It must:

- set out the type and quantity of the materials to be transferred
- the proposed date of transfer

Sample *Broker Agreements* are found on pages 7 and 8. Each party to the agreement must have a signed copy.

Responsibility of Generators using Brokers

Because brokers must meet a stringent set of licensing requirements, they will likely be held accountable for more of the liability issues surrounding the transfer of materials. Nevertheless, generators are responsible for

knowing whether there is sufficient storage available between their operation and the broker's operation to comply with the *Regulation.* Generators are also responsible for confirming that any broker they are dealing with is certified and meets the requirements of the *Regulation.*

PREPARING AGREEMENTS

Completeness

The agreements discussed here are legal documents and must be completed correctly. For example:

- if a leased property is in the name of more than one person all owners must sign the agreement
- if the document requires a witness, witnesses cannot be a family member or business partner — he or she must be an "arms-length" third party

Have a lawyer review these documents to ensure everyone's interests are protected. Improperly executed agreements and contracts could expose the parties to unnecessary liability.

Length of Agreements

The *Regulation* requires that all of the agreements discussed here be in force for a minimum of one year, but a Nutrient Management Strategy (NMS), Nutrient Management Plan (NMP) or a NASM plan (a plan to manage non-agricultural source materials) can be in force for up to five years. Consider negotiating a longer-term agreement, preferably five years.

If any of the agreements are terminated before the NMS, NMP or NASM plan expires, the strategy or plan must be updated.

Public Access

Please note that the general public may obtain copies of agreements made to comply with the *Nutrient Management Act* and its *Regulation* through the *Freedom of Information and Access to Privacy Act.*

This Factsheet has been updated by **Dale McComb,** Environmental Specialist, Environmental Management Branch, OMAFRA, and was originally written with **Daniel Ward**, P.Eng., Rural Management Engineer, Environmental Policy and Programs Branch and Dale McComb.

SAMPLE NUTRIENT TRANSFER AGREEMENT

GENERATOR

Name: John Farmer

Operation Identifier
(if previously assigned by Ministry): _____

and

RECEIVER

Name: Joe Commonman

Operation Identifier:
(if previously assigned by Ministry): _____

Location of where agricultural source materials are to be applied to land: Lot 12, Conc. 3 My Township, My County

Area of land available for spreading : 20 hectares

This agreement, between the parties named above, is for the transfer of the agricultural source material identified as:

- ☒ Farm Animal Manure
- ☐ Washwaters from Agricultural Operations
- ☐ Runoff from Livestock Yards or Manure Storage Facilities
- ☐ Organic Materials Produced by Intermediate Generators (i.e. Compost)

Proposed date(s) of transfer: Each May and December

Quantity transferred: 700 cubic metres

The Parties to this Agreement Agree as Follows:

- Both Parties will meet the requirements of the Nutrient Management Act, 2002, Ontario Regulation 267/03.
- The Generator and the Receiver warrant that between them there is adequate storage for these agricultural source materials and that the storage meets the requirements for construction and siting in Part VIII of the Regulation, if required by the Nutrient Management Act, 2002 Ontario Regulation 267/03.
- The terms of this agreement shall strictly apply to the present Receiver. Should the Receiver use the nutrient in a manner, which is demonstrated to cause environmental harm, the agreement ceases to apply.

This agreement shall be in force for a minimum period of one (1) year commencing January 1, 2009 and ending December 31, 2014 .

John Farmer		Jan. 1, 2009
Generator Name (print)	*Signature*	Date
Joe Commonman		Jan. 1, 2009
Receiver Name (print)	*Signature*	Date
I.C. Clearly		Jan. 1, 2009
Witness Name (print)	*Signature*	Date

OPTIONAL APPLICATION AGREEMENT

An application agreement is not required by Ontario Regulation 267/03 but may be used by operations required to have a Nutrient Management Plan and/or Nutrient Management Strategy as defined by Regulation 267/03, where nutrients are applied to land that is not owned or rented by the generator of the nutrients and the generator intends to manage the application of nutrients to the land.

GENERATOR INFORMATION:

Name of generator of manure/ agricultural source materials to be land applied: John Farmer

Legal Name of the owner of the generating operation: John Farmer Ltd.

Address RR #1, 555 Concession 2, Anytown, ON

N0N 0N0

Telephone: 123-555-1234

Operation Identifier:
(if previously assigned by Ministry)

LAND OWNER/RECEIVER INFORMATION:

Owner/manager of land on which manure/agricultural source materials will be applied: Joe Commonman

Legal name of the owner of the receiving operation: Commonman Enterprises, Inc.

Address: RR #2, 555 Concession 3, Anytown, ON

N0N 0N0

Telephone: 123-888-9876

Legal name of the land owner:
(if different from above)

Address:

Operation Identifier:
(if previously assigned by Ministry)

AGREEMENT INFORMATION:

Term of Agreement
(no less than 1 yr.): 5 years

Agreement commences on: September 1, 2009

Agreement ceases on: August 31, 2015

This agreement, between the parties named above, allows for the following fields to be included in the farm unit operator's Farm Unit Declaration and for application of manure or other agricultural source materials as agreed upon to these fields under the farm unit's nutrient management plan.

List each field/section under this agreement:

Field/ Section	Lot	Concession	Township	County	Tillable Hectares	Roll Number
3	12	3	My Township	My County	20	355335555003555
6	11	3	My Township	My County	12	355335555003556

☐ There are more fields listed on the back of this form.

I, Joe Commonman (landowner) give permission to John Farmer (generator of manure/agricultural source materials) to declare the above lands as part of the farm unit covered by the nutrient management strategy for the time period covered by this agreement.

I also give permission to the farm unit operator/authorized agent to do soil sampling on the properties listed to determine the condition of the soil. I also agree that the land identified in this agreement will not be used for the application of any other prescribed material, originating from any other operation, including my own (if I have any) during the term of this agreement.

I also agree that the agricultural source materials covered by this agreement will be applied in accordance to the nutrient management plan that applies to the farm unit into which these lands are incorporated.

A spill contingency plan was developed and fully reviewed by both parties.

Joe Commonman		Jan. 1, 2009
Land Owner (print)	*Signature*	Date
John Farmer		Jan. 1, 2009
Farm Unit Operator/ Authorized Agent (print)	*Signature*	Date
I.C. Clearly		Jan. 1, 2009
Witness (print)	*Signature*	Date

Note: *Permission to use these lands is required from all property owners listed on the title to the land. For properties owned by more than one person, permission may be given by additional owners in the form of a signature on this form or a signed letter accompanying this form.*

SAMPLE BROKER AGREEMENT WITH GENERATOR

BROKER

Name and **Certification Number:** Manure Brokers Inc 99999999

and

GENERATOR

Name: Joe Farmer

Operation Identifier:
(if previously assigned by Ministry): _____

This agreement, between the parties named above, is for the transfer of the agricultural source materials identified as:

- ☒ Farm Animal Manure
- ☐ Washwaters from Agricultural Operations
- ☐ Runoff from Livestock Yards or Manure Storage Facilities
- ☐ Organic Materials Produced by Intermediate Generators (i.e. Compost)

Description of operation where materials were generated: Mixed livestock operation, dairy and swine

Proposed date(s) of transfer: Each May and September

Quantity transferred: 700 cubic metres

Days of Storage available by broker: _____

The Parties to this Agreement Agree as Follows:
This agreement shall be in force for a minimum period of one (1) year commencing

January 1, 2006 and ending December 31, 2011 .

The terms of this agreement shall strictly apply to the present Broker. Should the Broker use the nutrient in a manner, which is demonstrated to cause environmental harm, the agreement ceases to apply.

Generator Name (print)	*Signature*	Date
Broker Name (print)	*Signature*	Date
Witness Name (print)	*Signature*	Date

SAMPLE BROKER AGREEMENT WITH RECEIVER

BROKER

Name and **Certification Number:** Manure Brokers Inc. 9999999

RECEIVER

Location where agricultural source materials are to be applied to land: Lot 12, Conc. 3 My Township, My County

Area of land available for spreading of agricultural source materials: 20 hectares

Name: Joe Commonman

Operation Identifier:
(if previously assigned by Ministry): _____

This agreement, between the parties named above, is for the transfer of the agricultural source material identified as:

- ☒ Farm Animal Manure
- ☐ Washwaters from Agricultural Operations
- ☐ Runoff from Livestock Yards or Manure Storage Facilities
- ☐ Organic Materials Produced by Intermediate Generators (i.e. Compost)

Description of operation where materials were generated: Mixed livestock operation, dairy and swine

Proposed date(s) of transfer: Each May and September

Quantity transferred: 700 cubic metres

The Parties to this Agreement Agree as Follows:
This agreement shall be in force for a minimum period of one (1) year commencing

January 1, 2009 and ending December 31, 2014 .

The terms of this agreement shall strictly apply to the present Broker. Should the Broker use the nutrient in a manner, which is demonstrated to cause environmental harm, the agreement ceases to apply.

Receiver Name (print)	*Signature*	Date
Broker Name (print)	*Signature*	Date
Witness Name (print)	*Signature*	Date

Agricultural Information Contact Centre: 1-877-424-1300
E-mail: ag.info.omafra@ontario.ca, www.ontario.ca/omafra
Northern Ontario Regional Office: 1-800-461-6132

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